

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting in part noncompetitive oil and gas lease offer OR 26560 (Wash.).

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease -- Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Generally

The regulation, 43 CFR 3101.3-3(a)(1), which provides that no offers for oil and gas leases covering wildlife refuge lands will be accepted, only precludes the leasing of lands withdrawn for the protection of all species of wildlife within a particular area. Where an offer is rejected on the basis of that regulation, but the case record provides no evidence of such a withdrawal, the decision to reject will be set aside and the case remanded for investigation into the nature of the creation of the refuge.

APPEARANCES: D. M. Yates, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On May 1, 1981, D. M. Yates filed a noncompetitive oil and gas lease offer for 360 acres in Benton County, Washington. 1/ On June 24, 1982, the Oregon State Office, Bureau of Land Management (BLM), issued a decision concerning OR 26560 (Wash.) stating:

All lands described in your oil and gas lease offer of May 1, 1981, lie within the boundaries of the Umatilla National

1/ The lands were described in the offer as follows: T. 5 N., R. 26 E., Willamette meridian, sec. 12: N 1/2 N 1/2, S 1/2 NE 1/4, SE 1/4 NW 1/4, NE 1/4 SE 1/4.

Wildlife Refuge. Lands within the National Wildlife Refuge System are exempt from oil and gas leasing pursuant to 43 CFR 3101.3-3(a), except when those lands are subject to protective leasing due to drainage and in those instances leases will be offered only competitively. Therefore, the lands in your offer, described below are rejected:

T. 5 N, R. 26 E., Willamette Meridian, Washington Sec. 12, NE 1/4, NW 1/4 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SE 1/4 (320.00 acres) [2/]

[1] The cited regulation, 43 CFR 3101.3-3(a), states:

(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. [3/] There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased * * *.

This regulation was construed by the Board in Esdras K. Hartley, 57 IBLA 319, 323 (1981), in which we stated that "43 CFR 3101.3-3(a)(1) precludes leasing only of lands embraced in a withdrawal for the protection of all species of wildlife within a particular area." BLM did not cite nor does the case record contain any information concerning the creation of the Umatilla National Wildlife Refuge.

On appeal, appellant states that the only reference to the refuge appears on the township plats "and a hand-written notation appearing on the aperature card for PLO 4210 which notes, 'Per Georgia of F&WS, this is Umatilla NWR. They didn't go through the Fed Reg.'" Appellant points out that part of the lands in question were affected by two public land orders (PLO's).

2/ The decision states that the basis for rejection is that all the lands in the offer lie within refuge boundaries; however, the lands rejected represent only part of the offer. BLM describes certain lands in its decision and gives an acreage total of 320 acres. Those described lands total only 280 acres.

3/ This regulation relates to drainage.

PLO 4210, dated April 24, 1967, withdrew certain lands in sec. 12, T. 5 N., R. 26 E., Willamette meridian, and reserved them for The John Day Wildlife Management Area of The John Day Lock and Dam Project (Exh. A to Appellant's Statement of Reasons). The withdrawal specifically indicated that it did not affect leasing under the mineral leasing laws. PLO 4524, dated September 30, 1968, withdrew for The John Day Wildlife Management Area of The John Day Lock and Dam Project the NW 1/4 NW 1/4, sec. 12, from all forms of appropriation, but not from leasing under the mineral leasing laws (Exh. B to Appellant's Statement of Reasons). Both of these PLO's indicated that leases could be issued only with the concurrence of the Corps of Engineers.

We are unable to ascertain from the present record whether the lands in question are embraced in a withdrawal for the protection of all species of wildlife. For that reason, we must set aside the BLM decision and remand the case file. If the lands are not within such a withdrawal, then oil and gas leasing is not precluded by 43 CFR 3103.3-3, see Bernard A. Holman, 64 IBLA 13 (1982). If leasing is not precluded, BLM must consult with the surface management agency concerning its leasing recommendations.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and remanded.

Bruce R. Harris
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

